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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

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11 MIKE WILEY,
12 Plaintiff(s),

2:13-cv-01210-JAD-NJK

13 v.

14 UNITED STATES OF AMERICA, et al.,
15 Defendant(s).

**REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE**

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17 Plaintiff Mike Wiley is proceeding in this action *pro se*. Plaintiff filed a complaint on July
18 10, 2013. Docket No. 1. Because the Court granted Plaintiff's request to proceed *in forma pauperis*,
19 the Court screened the complaint pursuant to 28 U.S.C. § 1915(e). Docket No. 4. The Court found
20 that Plaintiff's complaint was deficient because Plaintiff failed to allege a state law duty on which
21 his Federal Tort Claims Act claims were premised. *Id.* at 4-5. The Court further noted that it
22 appeared that Plaintiff's claims were barred by the discretionary function exception. *Id.* at 5-7. The
23 Court granted Plaintiff leave to amend his complaint, requiring that an amended complaint be filed
24 no later than October 23, 2013. *Id.* at 7. The Court indicated that "[f]ailure to comply with this
25 Order will result in the recommended dismissal of this case, without prejudice." *Id.* at 8.

26 To date, the Court has not received an amended complaint or a motion to extend the deadline
27 for filing one.

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1 Accordingly, **IT IS THE RECOMMENDATION** of the undersigned United States
2 Magistrate Judge that this case be **DISMISSED** without prejudice.

3 **NOTICE**

4 Pursuant to Local Rule IB 3-2 **any objection to this Report and Recommendation must**
5 **be in writing and filed with the Clerk of the Court within 14 days of service of this document.**

6 The Supreme Court has held that the courts of appeal may determine that an appeal has been waived
7 due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142
8 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2)
9 failure to properly address and brief the objectionable issues waives the right to appeal the District
10 Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951
11 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir.
12 1983).

13 DATED: October 28, 2013

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NANCY J. KOPPE
United States Magistrate Judge